

ASSEMBLY BILL

No. 2271

Introduced by Assembly Member Ian Calderon

February 21, 2014

An act to amend Section 98 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, as introduced, Ian Calderon. Employment: employee complaints.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 98 of the Labor Code is amended to read:
- 2 98. (a) The Labor Commissioner is authorized to investigate
- 3 employee complaints. The Labor Commissioner may provide for
- 4 a hearing in ~~any~~ *an* action to recover wages, penalties, and other
- 5 demands for compensation, including liquidated damages if the
- 6 complaint alleges payment of a wage less than the minimum wage

1 fixed by an order of the Industrial Welfare Commission or by
2 statute, properly before the division or the Labor Commissioner,
3 including orders of the Industrial Welfare Commission, and shall
4 determine all matters arising under his or her jurisdiction. It is
5 within the jurisdiction of the Labor Commissioner to accept and
6 determine claims from holders of payroll checks or payroll drafts
7 returned unpaid because of insufficient funds, if, after a diligent
8 search, the holder is unable to return the dishonored check or draft
9 to the payee and recover the sums paid out. Within 30 days of the
10 filing of the complaint, the Labor Commissioner shall notify the
11 parties as to whether a hearing will be held, whether action will
12 be taken in accordance with Section 98.3, or whether no further
13 action will be taken on the complaint. If the determination is made
14 by the Labor Commissioner to hold a hearing, the hearing shall
15 be held within 90 days of the date of that determination. However,
16 the Labor Commissioner may postpone or grant additional time
17 before setting a hearing if the Labor Commissioner finds that it
18 would lead to an equitable and just resolution of the dispute. A
19 party who has received actual notice of a claim before the Labor
20 Commissioner shall, while the matter is before the Labor
21 Commissioner, notify the Labor Commissioner in writing of ~~any~~
22 *a* change in that party's business or personal address within 10
23 days after the change in address occurs.

24 It is the intent of the Legislature that hearings held pursuant to
25 this section be conducted in an informal setting preserving the
26 rights of the parties.

27 (b) When a hearing is set, a copy of the complaint, which shall
28 include the amount of compensation requested, together with a
29 notice of time and place of the hearing, shall be served on all
30 parties, personally or by certified mail, or in the manner specified
31 in Section 415.20 of the Code of Civil Procedure.

32 (c) Within 10 days after service of the notice and the complaint,
33 a defendant may file an answer with the Labor Commissioner in
34 ~~any~~ *a* form as the Labor Commissioner may prescribe, setting forth
35 the particulars in which the complaint is inaccurate or incomplete
36 and the facts upon which the defendant intends to rely.

37 (d) ~~No~~ A pleading other than the complaint and answer of the
38 defendant or defendants shall *not* be required. Both shall be in
39 writing and shall conform to the form and the rules of practice and
40 procedure adopted by the Labor Commissioner.

1 (e) Evidence on matters not pleaded in the answer shall be
2 allowed only on terms and conditions the Labor Commissioner
3 shall impose. In all these cases, the claimant shall be entitled to a
4 continuance for purposes of review of the new evidence.

5 (f) If the defendant fails to appear or answer within the time
6 allowed under this chapter, ~~no~~ a default shall *not* be taken against
7 him or her, but the Labor Commissioner shall hear the evidence
8 offered and shall issue an order, decision, or award in accordance
9 with the evidence. A defendant failing to appear or answer, or
10 subsequently contending to be aggrieved in ~~any~~ a manner by want
11 of notice of the pendency of the proceedings, may apply to the
12 Labor Commissioner for relief in accordance with Section 473 of
13 the Code of Civil Procedure. The Labor Commissioner may afford
14 this relief. ~~No~~ A right to relief, including the claim that the findings
15 or award of the Labor Commissioner or judgment entered thereon
16 are void upon their face, shall *not* accrue to the defendant in any
17 court unless prior application is made to the Labor Commissioner
18 in accordance with this chapter.

19 (g) ~~All hearings~~ A *hearing* conducted pursuant to this chapter
20 ~~are~~ is governed by the division and by the rules of practice and
21 procedure adopted by the Labor Commissioner.

22 (h) (1) Whenever a claim is filed under this chapter against a
23 person operating or doing business under a fictitious business
24 name, as defined in Section 17900 of the Business and Professions
25 Code, which relates to the person's business, the division shall
26 inquire at the time of the hearing whether the name of the person
27 is the legal name under which the business or person has been
28 licensed, registered, incorporated, or otherwise authorized to do
29 business.

30 (2) The division may amend an order, decision, or award to
31 conform to the legal name of the business or the person who is the
32 defendant to a wage claim, if it can be shown that proper service
33 was made on the defendant or his or her agent, unless a judgment
34 had been entered on the order, decision, or award pursuant to
35 subdivision (d) of Section 98.2. The Labor Commissioner may
36 apply to the clerk of the superior court to amend a judgment that
37 has been issued pursuant to a final order, decision, or award to

- 1 conform to the legal name of the defendant, if it can be shown that
- 2 proper service was made on the defendant or his or her agent.

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